



Summary of Decision

4 April 2014

The Australasian Meat Industry Employees Union v JBS Australia Pty Ltd

C2014/3731

1. The Australasian Meat Industry Employees Union (AMIEU) made an application for an order pursuant to s.418 of the *Fair Work Act 2009* (the Act) against employer JBS Australia Pty Ltd (JBS). A decision on transcript was delivered on 2 April 2014. The Fair Work Commission (the Commission) found that the action taken by JBS was not protected industrial action as it did not meet the definition of “employer response action” in s.411 of the Act. An Order was issued on 2 April 2014. [See PR549226](#). The decision sets out the reasons for the above finding in greater detail.

2. The parties are currently in negotiations for a new enterprise agreement to replace the current expired enterprise agreement, *JBS Australia Pty Limited - Bordertown Production Employees Enterprise Agreement 2012* (the Agreement). On 18 February 2014 a protected action ballot order was issued by the Commission and was declared on 14 March 2014 with a majority of employees voting in favour of the various forms of industrial action set out in the ballot. The AMIEU provided JBS with written notice of protected industrial action on 27 March 2014 which resulted in JBS issuing a notice to all employees that they would be stood down on 2 April 2014, the day on which the employee claim action was to take place.

3. JBS relied on the stand down clause of the Agreement to support its actions. The Commission held that the stand down clause did not apply. The dispute between the parties concerns the negotiation of an enterprise agreement, and taking protected industrial action by employees does not entitle the employer to utilise the stand down provision.

4. The employer action in locking out the employees was not employer response action as defined in s.411 of the Act as it took place before any employee claim action had taken place.

[\[2014\] FWC 2254](#)

- ***This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission’s reasons.***

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